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| 10/651,697 | 08/29/2003 | Edward R.W. Rowe | 07844-592001 | 9204 |

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**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

PTOL-90A (Rev. 04/07)

| | Application No. | Applicant(s) |
|---|---|---|
| **Office Action Summary** | 10/651,697 | ROWE ET AL. |
| | **Examiner** | **Art Unit** | |
| | William H. Wood | 2193 | |

*-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --*

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE <u>3</u> MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.
- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
  Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

1)☒ Responsive to communication(s) filed on <u>03 April 2007</u>.

2a)☒ This action is **FINAL**.   2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

4)☒ Claim(s) <u>1-87</u> is/are pending in the application.

    4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) <u>1-87</u> is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

**Application Papers**

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

    Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

    Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

    a)☐ All   b)☐ Some * c)☐ None of:

      1.☐ Certified copies of the priority documents have been received.

      2.☐ Certified copies of the priority documents have been received in Application No. _____.

      3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

    * See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

1)☐ Notice of References Cited (PTO-892)
2)☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3)☐ Information Disclosure Statement(s) (PTO/SB/08)
    Paper No(s)/Mail Date _____.

4)☐ Interview Summary (PTO-413)
    Paper No(s)/Mail Date. _____.
5)☐ Notice of Informal Patent Application
6)☐ Other: _____.

## DETAILED ACTION

Claims 1-87 are pending and have been examined.

### *Claim Rejections - 35 USC § 112*

1.    The following is a quotation of the first paragraph of 35 U.S.C. 112:

> The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

2.    Claims 1-82 and 86 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. Newly added limitations to independent claims (especially concerning "updating the updater application") are not supported by the originally filed disclosure. Applicant claims support on page 23, but no such page was originally filed. Newly added dependent claim 86 is not supported as the originally disclosure does not discuss "customizing a user interface".

### *Claim Rejections - 35 USC § 102*

3.    The following is a quotation of the appropriate paragraphs of 35

U.S.C. 102 that form the basis for the rejections under this section made in

this Office action:

> A person shall be entitled to a patent unless –
>
> (b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States..
>
> (e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.
>
> (e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371(c) of this title before the invention thereof by the applicant for patent.

The changes made to 35 U.S.C. 102(e) by the American Inventors Protection Act of 1999 (AIPA) and the Intellectual Property and High Technology Technical Amendments Act of 2002 do not apply when the reference is a U.S. patent resulting directly or indirectly from an international application filed before November 29, 2000. Therefore, the prior art date of the reference is determined under 35 U.S.C. 102(e) prior to the amendment by the AIPA (pre-AIPA 35 U.S.C. 102(e)).

4.    Claims 1-15, 18-26, 29-43, 46-54 and 83-87 are rejected under 35

U.S.C. 102(b) as being anticipated by **Cheng** et al. (USPN 6,151,643).

*Claim 1*

**Cheng** disclosed a computer-implemented method for updating software in a client environment, the client environment including an updater application operable to update software, the method comprising:

receiving update information in the client environment, the update information identifying one or more available software products and one or more update scripts associated with the updater application *(column 3, lines 25-39; and column 12, lines 43-54, script)*;

during an updater application update process, with the updater application *(column 7, lines 46-53, "client application" or updater application determines list installed of products including "applications, system utilities, drivers and other executables or resources")*,

receiving in the client environment update instructions associated with the one or more identified update scripts *(column 12, lines 43-54, script)*; and

updating the updater application in the client environment from an earlier version to a new version by storing the received update instructions *(column 7, lines 54-56, update of software product; column 9, lines 3-6, line 17, the updates are installed; column 7, lines 46-53, "client application" or updater application determines list installed of products including "applications, system utilities, drivers and other executables or resources" thus including the updater application)*;

during a software product update process, with the updater application

*(column 7, lines 46-53, "client application" or updater application determines list*

*installed of products including "applications, system utilities, drivers and other*

*executables or resources"),*

executing update instructions in the client environment to identify one

or more of the available software products as suitable for the client

environment *(column 3, lines 32-39)*;

receiving in the client environment an input selecting one or more of the

identified suitable software products *(column 3, lines 40-41)*;

retrieving the selected software products to the client environment

*(column 3, lines 44-45)*; and

installing the retrieved software products in the client environment

*(column 3, lines 48-49)*.

## Claim 2

**Cheng** disclosed the method of claim 1, wherein:

executing update instructions in the client environment to identify

suitable software products includes executing instructions to evaluate the

client environment *(column 3, lines 32-39)*.

## Claim 3

**Cheng** disclosed the method of claim 2, wherein:

evaluating the client environment includes identifying software or

hardware installed in the client environment *(column 3, lines 32-39)*.

## Claim 4

**Cheng** disclosed the method of claim 2, further comprising:

determining in the client environment when to request update

information *(column 3, lines 27-29)*.

## Claim 5

**Cheng** disclosed the method of claim 4, wherein:

the update instructions include scheduling instructions *(column 7, lines

5-11)*; and

determining in the client environment when to request update

information includes executing one or more of the scheduling instructions

*(column 7, lines 5-11)*.

## Claim 6

**Cheng** disclosed the method of claim 2, wherein:

executing update instructions to identify suitable software products

includes executing instructions to interpret the update information identifying

the available software products *(column 3, lines 25-39)*.

Claim 7

**Cheng** disclosed the method of claim 6, wherein:

interpreting the update information includes determining whether

new update instructions are required for processing the available software

products *(column 3, lines 32-38)*; and

if new update instructions are required, identifying suitable software

products includes retrieving and executing the new update instructions in the

client environment *(column 3, lines 45-49).*

Claim 8

**Cheng** disclosed the method of claim 2, wherein:

receiving an input selecting one or more of the suitable software products

includes receiving user input selecting one or more of the suitable software

products *(column 3, lines 40-41).*

Claim 9

**Cheng** disclosed the method of claim 2, wherein:

the available software products include one or more available software

updates *(column 3, lines 32-39)*; and

executing update instructions in the client environment to identify

suitable software products includes executing update instructions to identify

one or more of the available software updates as suitable for software in the

client environment *(column 3, lines 32-39).*


## Claim 10

**Cheng** disclosed the method of claim 9, wherein:

receiving update information in  the  client  environment  includes

receiving information indicating a version number and/or dates of  last

modification  of  each available software update *(figure 8, element 805).*


## Claim 11

**Cheng** disclosed the method of claim 9, wherein:

executing update instructions to identify suitable updates includes

executing instructions to identify updates of a software product installed in the

client environment *(column 3, lines 32-39).*


## Claim 12

**Cheng** disclosed the method of claim 11, wherein:

executing the instructions to identify updates of the installed software

product includes executing instructions to identify updates that add optional

components to the installed software product *(column 1, lines 29-30).*


## Claim 13

**Cheng** disclosed the method of claim 11, wherein:

the installed software product has a first version number *(column 11, lines 61-63)*; and

executing the instructions to identify updates of the installed software product includes executing instructions to identify updates that are operable to update the installed software product from the first to a second version number *(column 11, lines 61-63)*.

*Claim 14*

**Cheng** disclosed the method of claim 9, wherein:

the update instructions are executed in the client environment by the updater application, the updater application being associated with one or more software products installed in the client environment *(column 9, lines 3-6)*; and

executing update instructions to identify suitable updates includes executing update instructions to identify suitable updates that are unrelated to the software products associated with the updater application *(column 9, lines 3-6)*.

*Claim 15*

**Cheng** disclosed the method of claim 9, wherein:

retrieving the selected software updates includes executing update instructions to identify installers for the selected software updates and

retrieving the identified installers *(column 12, lines 9-54, figure 8, elements 825*

*and 826)*; and

installing the retrieved software updates includes using the retrieved

installers to install the retrieved software updates *(column 12, lines 9-54)*.


*Claim 18*

**Cheng** disclosed the method of claim 2, wherein:

executing update instructions to identify suitable software products

includes executing instructions to specify a user interface for updating software

in the client environment *(figures 3-6)*.


*Claim 19*

**Cheng** disclosed the method of claim 18, further comprising:

presenting a representation of at least a portion of the update

information to a user in the specified user interface *(figures 3-6)*.


*Claim 20*

**Cheng** disclosed the method of claim 2, wherein:

retrieving the selected software products includes retrieving the selected

software products as digitally signed data *(column 16, lines 48-65)*.


*Claim 21*

**Cheng** disclosed the method of claim 2, further comprising:

receiving one or more update instructions in the client environment

*(column 3, lines 25-39 and lines 44-45).*


## Claim 22

**Cheng** disclosed the method of claim 21, wherein:

receiving update instructions includes receiving update instructions as

digitally signed data *(column 16, lines 48-65).*


## Claim 23

**Cheng** disclosed the method of claim 21, wherein:

receiving update instructions or update information in  the  update

client includes receiving data from one or more stateless file servers *(figure 1,*

*elements 103 and 102; column 13, lines 48-57).*


## Claim 24

**Cheng** disclosed the method of claim 2, further comprising:

caching the update instructions *(figure 1, element 101, client computer*

*and column 24, lines 19-24, ads also "update instruction").*


## Claim 25

**Cheng** disclosed the method of claim 2, wherein:

the update instructions are specified in a platform independent form

*(column 12, lines 30-45).*

## Claim 26

**Cheng** disclosed the method of claim 2, wherein:

the update instructions are specified in an interpreted computer

language *(figure 8, element 826).*

## Claims 29-43 and 46-54

The limitations of claims 29-43 and 46-54 correspond to the limitations of

claims 1-15 and 18-26 and are rejected in the same manner.

## Claim 83

**Cheng** disclosed a system comprising:

a client including an updater application associated with one or more

software products installed on the client *(column 7, lines 46-53, "client*

*application" or updater application determines list installed of products including*

*"applications, system utilities, drivers and other executables or resources");* and

a stateless server, wherein the client is configured to communicate with

the stateless server over a network *(column 8, lines 36-43, "software vendor*

*computer");*

wherein the updater application is configured to receive one or more

static data files from the stateless server over the network *(column 3, lines 29-*

*31; column 8, lines 36-43, "installation programs, files, and the like"),* wherein

the updater application is configured to execute the one or more static data

files to customize the updater application *(column 7, lines 54-56, update of*

*software product; column 9, lines 3-6, line 17, the updates are installed; column*

*7, lines 46-53, "client application" or updater application determines list installed*

*of products including "applications, system utilities, drivers and other*

*executables or resources" thus including the updater application).*

## Claim 84

**Cheng** disclosed the system of claim 83, wherein:

the client is configured to execute the one or more static data files to

update the associated one or more software products installed on the client

*(column 7, lines 54-56, update of software product; column 9, lines 3-6, line 17,*

*the updates are installed; column 7, lines 46-53, "client application" or updater*

*application determines list installed of products including "applications, system*

*utilities, drivers and other executables or resources" thus including the updater*

*application).*

## Claim 85

**Cheng** disclosed the system of claim 83, wherein:

the one or static data files include instructions for customizing

scheduling routines of the updater application *(column 7, lines 5-11)*.


*Claim 86*

**Cheng** disclosed the system of claim 83, wherein:

the one or more static data files include instructions for customizing a

user interface of the updater application *(figures 3-6 demonstrate an interface*

*customized from database data downloaded from server, see column 3, lines 29-*

*32)*.


*Claim 87*

**Cheng** disclosed the system of claim 83, wherein:

the one or more static data files include instructions for customizing an

update manager of the updater application, the update manager configured to

communicate with the stateless server to receive the one or more static data

files *(column 7, lines 54-56, update of software product; column 9, lines 3-6, line*

*17, the updates are installed; column 7, lines 46-53, "client application" or*

*updater application determines list installed of products including "applications,*

*system utilities, drivers and other executables or resources" thus including the*

*updater application; and column 7, lines 50-53)*.

5.    Claims 28 and 56 are rejected under 35 U.S.C. 102(e) as being

anticipated by **Johnson** (USPN 6,904,592).

<u>Claims 28 and 56</u>

**Johnson** disclosed a computer-implemented method for updating software in a

client environment, the method comprising:

receiving a software update for a software product in a client

environment, the software update including a sequence of installer applications

for updating the software product from an earlier version to a new version

according to the software update *(column 7, lines 17-23, patches)*; and

executing the installer applications in an order defined by the sequence

to update the software product from the earlier version through one or more

intermediate versions to the new version in the client environment *(column 8,

lines 15-40)*.

### Claim Rejections - 35 USC § 103

6.    The following is a quotation of 35 U.S.C. 103(a) which forms the basis for

all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or
> described as set forth in section 102 of this title, if the differences between the subject
> matter sought to be patented and the prior art are such that the subject matter as a whole
> would have been obvious at the time the invention was made to a person having ordinary
> skill in the art to which said subject matter pertains. Patentability shall not be negatived by
> the manner in which the invention was made.

7.      Claims 16-17 and 44-45 are rejected under 35 U.S.C. 103(a) as being

unpatentable over **Cheng** et al. (USPN 6,151,643) in view of **Johnson** (USPN

6,904,592).

### Claims 16 and 44

**Cheng** did not explicitly state method of claim 15, though **Johnson** did as

indicated, wherein:

    executing update instructions to identify installers includes executing

instructions to identify a sequence of two or more installers for updating a

software product *(Johnson: column 7, lines 17-23, patches)*; and

    using the retrieved installers includes executing the two or more installer

applications for updating the software product in an order defined by the

identified sequence *(Johnson: column 8, lines 15-40).*

It would have been obvious to one of ordinary skill in the art at the time of

invention to implement the updating and installation system of **Cheng** with

version compatibility as found in **Johnson**'s teaching.  This implementation

would have been obvious because one of ordinary skill in the art would be

motivated to ensure compatibility of updates with current software in order to

ensure update (**Johnson**:  column 8, lines 16-17 and lines 25-31).

### Claim 17 and 45

**Cheng** and **Johnson** disclosed the method of claim 16, wherein:

executing update instructions to identify installers includes executing

instructions to identify dependencies between installer applications for

updating the software product *(column 8, lines 15-40)*.

8.      Claims 27 and 55 are rejected under 35 U.S.C. 103(a) as being

unpatentable over **Cheng** et al. (USPN 6,151,643) in view of Applicant Admitted

Prior Art **(AAPA)**, non-traversed official notice according to MPEP 2144.03.

## *Claims 27 and 55*

**Cheng** did not explicitly state the method of claim 26, wherein: the interpreted

computer language is JavaScript or VBScript. **AAPA** is taken that it was

known at the time of invention to make use of JavaScript or VBScript for

performing functions in a computer. It would have been obvious to one of

ordinary skill in the art at the time of invention to implement the script of

**Cheng** with JavaScript or VBScript. This implementation would have been

obvious because one of ordinary skill in the art would be motivated to make

use of a common and readily available script thus reducing development time

and cost.

### *Response to Arguments*

9.      Applicant's arguments filed 03 April 2007 have been fully considered but

they are not persuasive. Applicant argues newly added "updater" limitations

are not disclosed by **Cheng**. This is shown to be incorrect in view of the above rejections. Additionally, the above rejections demonstrate limitations "customizing the user interface" and "update scheduling" as now claimed in new claims 83-87. Having addressed Applicant's raised concerns, the rejections are maintained as indicated.

## *Conclusion*

10. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.
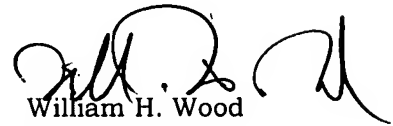
## *Correspondence Information*

Any inquiry concerning this communication or earlier communications from the examiner should be directed to William H. Wood whose telephone number is (571)-272-3736. The examiner can normally be reached 10:00am - 4:00pm Monday thru Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Meng-Ai An can be reached on (571)-272-3756. The fax phone numbers for the organization where this application or proceeding is assigned are (571)273-8300 for regular communications.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained form either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR systems, see http://pair-direct.uspto.gov. For questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703)305-3900.

William H. Wood
Patent Examiner
AU 2193
June 8, 2007